

CIVIL CASE MANAGEMENT PLAN

UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF NEW YORK

Shelton Brothers Inc.

v.

NO. 6 : 14 CV 01168

Tri-Valley Beverages, Inc., et. al.,

IT IS HEREBY ORDERED that, pursuant to Rule 16(b), Federal Rules of Civil Procedure, a status and scheduling conference will be held in this case before the Honorable Andrew Baxter, United States Magistrate Judge on November 19 2014 at 11:00 : A M. at the United States Courthouse, Room No via telephone, at _____, New York.

Counsel for all parties or individuals appearing pro se in the above-captioned action are directed to confer in accordance with Fed. R. Civ. P. 26(f) with respect to all of the agenda items listed below, no later than **twenty-one (21) days** before the scheduled Rule 16 Conference. Following that Rule 26(f) conference, a report of the results of the conference, in the format set forth below, must be filed with the clerk no later than seven (7) **days** prior to the scheduled Rule 16 conference with the Court. Matters which the Court will discuss at the status conference will include the following: (insert a separate subparagraph as necessary if parties disagree):

1) JOINDER OF PARTIES: Any application to join any person as a party to this action shall be made on or before the 19th day of January, 2015.

2) AMENDMENT OF PLEADINGS: Any application to amend the pleadings to this action shall be made on or before the 19th day of March, 2015.

3) DISCOVERY: All discovery in this action shall be completed on or before the 19th day of June, 2015. **(Discovery time table is to be based on the complexity of the action)**

4) MOTIONS: All motions, including discovery motions, shall be made on or before the 18th day of September, 2015. **(Non-Dispositive motions including discovery motions may only be brought after the parties have complied with Section IX of General Order #25)**

5) PROPOSED DATE FOR THE COMMENCEMENT OF TRIAL: The action will be ready to proceed to trial on or before the 18 day of January, 2016. It is anticipated that the trial will take approximately 5 days to complete. The parties request that the trial be held in Albany, N.Y.

(The proposed date for the commencement of trial must be within 18 months of the filing date).

6) HAVE THE PARTIES FILED A JURY DEMAND: ☒ (YES) ☐ (NO)

7) DOES THE COURT HAVE SUBJECT MATTER JURISDICTION? ARE THE PARTIES SUBJECT TO THE COURT'S JURISDICTION? HAVE ALL PARTIES BEEN SERVED?

The instant action was brought under §1332 of the FRCP (Diversity Jurisdiction) and all parties have been served.

8) WHAT ARE THE FACTUAL AND LEGAL BASES FOR PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES (INCLUDE COUNTERCLAIMS & CROSSCLAIMS, IF APPLICABLE)?

The action is brought seeking a declaratory judgment that there is no enforceable contractual relationship between the parties and that the plaintiff is free to engage other beer distributors within New York State. In the defendants' counterclaims, they seek a declaratory judgment that the plaintiff must continue to sell to them based on contract and N.Y. Alco. Bev. Ctrl. L. § 55-c.

9) WHAT FACTUAL AND LEGAL ISSUES ARE GENUINELY IN DISPUTE?

Whether there is a enforceable contractual relationship and whether the requirements of N.Y. Alco. Bev. Ctrl. L. § 55-c mandate continued sales.

10) CAN THE ISSUES IN LITIGATION BE NARROWED BY AGREEMENT OR BY MOTIONS? ARE THERE DISPOSITIVE OR PARTIALLY DISPOSITIVE ISSUES APPROPRIATE FOR DECISION ON MOTION?

The issues in this case may be able to be narrowed by stipulation and/or motion. Dispositive motions may also be useful.

11) WHAT SPECIFIC RELIEF DO THE PARTIES SEEK? WHAT ARE THE DAMAGES SOUGHT?

Each party seeks declaratory relief.

12) DISCOVERY PLAN:

A. Mandatory Disclosures

The parties will exchange the mandatory disclosures required under Rule 26(a)(1) at least seven (7) days prior to the date of the Rule 16 conference, unless they have obtained prior approval from the assigned Magistrate Judge to extend that deadline.

B. Subjects of Disclosure

The parties jointly agree that discovery will be needed to address the following subjects:

The existence or non-existence of a contractual relationship between the parties.
The plaintiff's history doing business and selling beer in New York State.
The previous dealings between the plaintiff and the defendants.
The satisfaction of the requirements of N.Y. Alco. Bev. Ctrl. L. § 55-c.

C. Discovery Sequence

Describe the parties' understanding regarding the timing of discovery, and state whether it is anticipated that discovery will be phased to address different issues in stages.

There is no anticipation of separate phases of discovery. It is anticipated that after the customary documentary discovery, party and non-party depositions will be completed.

D. Written Discovery

Describe the written discovery demands which the parties contemplate serving under Rules 33, 34 and 36, including when they will be promulgated, the areas to be covered, and whether there is any need for any party to exceed the number of interrogatories permitted under Rule 33.

It is anticipated that the parties will serve notice for admission, document demands and interrogatories. They will be served within 60 days after receipt of the mandatory discovery and supplemented as needed per the FRCP and local rules. It is not anticipated that the the parties will exceed the interrogatories permitted under Rule 33.

E. Depositions

Set forth the parties' expectations regarding depositions, including the approximate number to be taken, their location, a general description of the deponents, and an indication of whether any non-party fact depositions are anticipated.

The parties will work together to ensure mutually convenient scheduling (both in terms of time and location) of depositions. Plaintiff reserves the right to take all depositions in Albany, NY. Initial discovery is needed to answer fully.

F. Experts

Set forth the parties' expectations regarding the retention of experts, and identify any particular issues to be addressed by the court concerning the retention and exchange of the information regarding experts, including whether the parties seek a variance from the expert disclosure requirements of the form uniform pretrial scheduling order typically issued by the court (i.e., initial expert disclosure at least ninety days, responsive expert disclosures at least forty-five days, and rebuttal reports due at least thirty days, before the close of discovery).

At this time it is not anticipated that experts will be necessary, yet both parties reserve the right to supplement or amend this response at a later date.

G. Electronic Discovery

Set forth the parties' understanding and expectations regarding discovery of electronically stored information. This description should include any agreements reached with respect to the retention of electronically stored information and the manner in which it will be produced, if requested. The parties should also identify any agreements regarding the manner in which electronically stored information subject to claims of privilege or work product protection will be handled, and whether a court order will be requested, either on stipulation or otherwise, to address this issue. If an agreement has been reached on the entry of such an order, provide a brief description of the provisions which will be included in a proposed order.

There has been no agreement reached as to Electronic Discovery. It is anticipated that both parties will make requests seeking email communications.

H. Protective Orders

If the parties anticipate requesting a protective order from the court pursuant to Rule 26(c), describe the basis for the request and nature of the proposed protective order.

At this time, the parties do not anticipate the need for a protective order, although envision the possibility that such an order could be necessary to protect sensitive business information.

I. Anticipated Issues Requiring Court Intervention

Provide a brief description of any discovery related issues which, the parties reasonably anticipate, may require court intervention.

None at this time.

13) IS IT POSSIBLE TO REDUCE THE LENGTH OF TRIAL BY STIPULATIONS, USE OF SUMMARIES OR STATEMENTS, OR OTHER EXPEDITED MEANS OF PRESENTING EVIDENCE? IS IT FEASIBLE AND DESIRABLE TO BIFURCATE ISSUES FOR TRIAL?

Stipulations and other methods could potentially shorten the length of trial. It is not anticipated that bifurcation would be feasible or desirable.

14) ARE THERE RELATED CASES PENDING BEFORE THE JUDGES OF THIS COURT?

No.

15) IN CLASS ACTIONS, WHEN AND HOW WILL THE CLASS BE CERTIFIED?

N/A

16) WHAT ARE THE PROSPECTS FOR SETTLEMENT? Please circle below the prospect for settlement:

1 2 3 4 5 6 7 8 9 10
(VERY UNLIKELY) → → → → → → → → → → (LIKELY)

CANNOT BE EVALUATED PRIOR TO 6/19/15 (DATE)

HOW CAN SETTLEMENT EFFORTS BE ASSISTED?

(Do not indicate any monetary amounts at this time, settlement will be explored by the Magistrate Judge at the time of the initial status conference)

COMPLETE QUESTION 17 ONLY IF YOUR FILING ORDER COVER SHEET WAS CHECKED AS AN ADR TRACK CASE - Subject to Mandatory Mediation under General Order #47.

17) IF YOUR CASE WAS SELECTED AS A QUALIFYING MANDATORY MEDIATION CASE, CONFIRM THAT YOU HAVE:

- A. Reviewed General Order #47 ? ☒ YES ☐ NO
- B. Reviewed the List of Court Approved Mediators available on the NDNY website? ☒ YES ☐ NO
- C. Prepared to discuss with the Court, at the conference, whether your case should be opted out of the program. ☒ YES ☐ NO
- D. Discussed the time frame needed to complete Mandatory Mediation? ☒ YES ☐ NO

Pursuant to Fed. R. Civ. P. 26(f) a conference was held on _____ at _____ (Date)

_____ with the participation of: _____
(Place)

_____ for plaintiff(s)

_____ for
defendant(s) _____

(party name)

_____ for
defendant(s) _____

(party name)

At the Rule 16(b) conference, the Court will issue an order directing the future proceedings in this action. The parties are advised that failure to comply with this order may result in the imposition of sanctions pursuant to Federal Rules of Civil Procedure 16(f).

Please detach this case management plan form and file electronically with the Clerk no later than seven (7) days in advance of the conference date.